

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.)
MICHAEL STANLEY KAPLAN, M.D.,)
Defendant.)
)
2:13-cr-00377-PMP-CWH
ORDER

QBDEFB

On September 24, 2014, a jury found Defendant Dr. Michael Stanley Kaplan guilty of Conspiracy to Commit Adulteration with Intent to Defraud or Mislead (Count One) and False Statement to a Government Agency (Count Two). Now before the Court is Defendant's Motion in Arrest of Judgment With Respect to Count One of the Indictment for Failure to Invoke the Jurisdiction of the Court (Doc. #146). Defendant's motion is repetitive of the Pretrial Motion to Dismiss Count One for Failure to State a Federal Offense or Invoke the Jurisdiction of the Court (Doc. #25), which the Court denied in its Order issued September 5, 2014 (Doc. #76). For the reasons set forth in the Court's prior Order (Doc. #76), the Court finds Defendant Kaplan's instant motion also should be denied.

Arguing that “the Food and Drug Administration does not regulate the practice of medicine,” Defendant capsulizes his argument as follows:

Here there can be no dispute that the challenged reuse of biopsy needle guides was in fact done pursuant to and within the course of the practice of medicine by Dr. Kaplan. This Court therefore lacks jurisdiction; and accordingly, arrest of judgment should be granted.

(Doc. #146 at p.4, ln. 24-27.)

However, in its prior Order, the Court already rejected Defendant’s argument that invoking federal jurisdiction under 21 U.S.C. §§ 331, 333, and 351, impermissibly intrudes on regulation of the practice of medicine which is a matter typically reserved exclusively to the States. As this Court noted in quoting the Report and Recommendation of Magistrate Judge Hoffman, the focus of Count One, “is upon the conspiracy to adulterate the single use needle guide held for sale to a patient, not the procedure used to conduct a biopsy with a needle guide.” (Doc. #76 at p. 7, ln. 12-14.)

IT IS THEREFORE ORDERED that Defendant Dr. Michael Stanley Kaplan's Motion in Arrest of Judgment with Respect to Count One of the Indictment for Failure to Invoke the Jurisdiction of the Court (Doc. #146) is **DENIED**.

DATED: December 1, 2014.


PHILIP M. PRO
United States District Judge